IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR

BENCH, JAIPUR.

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J U D G M E N T

Jhallupal Vs. State of Raj.

D.B.CRIMINAL APPEAL NO.1040/2004
against the impugned judgment
dated 13.8.2004 passed by learned
Addl. Sessions Judge (FT), Chhabra
in Sessions case No.13/2004.

Date of Judgment : April 18th, 2006.

P R E S E N T
HON'BLE MR.JUSTICE SHIV KUMAR SHARMA

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr.Liyakat Ali for Mr.N.A. Naqvi, for the appellant.
Mr.R.P.Kuldeep, Public Prosecutor.

REPORTABLE BY THE COURT: (PER HON'BLE KOTHARI,J.)

1. Sukhchen Singh, a truck driver lost his worldy 'Sukhchen' (peace) and went to eternal peace, as he was found dead and his body was found lying on the road side near village Bamla. The face of dead body was found mutilated on one side on 6.1.2000 at about 9.00 AM in the morning and report to this effect was lodged by Hari Singh, PW-11 with police station-Bapna, Distt. Baran. The written report Ex.P-22 and FIR No.7/2000 Ex.P-23 are on record.

2. According to the prosecution, after completion of investigation, a charge-sheet was filed against the present appellant accused Jhallupal, co-driver of truck No.HR-38/D-9312 of which the deceased Sukhchen Singh was main driver

and one Rampal, brother of appellant Jhallupal was Khallasi of that truck, both these persons were tried for offence under Secs. 302 & 201 read with Sec.34 IPC by the learned trial court and the learned Trial court by the judgment under appeal dated 13.8.2003 acquitted the co-accused Rampal; whereas the present appellant was convicted for offence under Sec. 302 IPC and sentenced to life imprisonment and fine of Rs.2000/-, and in default thereof, to further undergo two years' rigorous imprisonment.

3. The appellant pleaded not guilty and claimed trial and the prosecution examined as many as 20 prosecution witnesses and exhibited 39 documents.

4. According to prosecution, on 6.1.2000, Hari Singh (Pw.11) gave a written report to Jagdish Prasad, ASI of Police Station Bapcha that today morning on 6.1.2000 at 9.00 AM, Radhey Shyam s/o. Amarlal of village Bamla sent a boy Sagar to him who told him that one man was lying dead on the east side of road near village Bamla and since RAC Head Shri Purshottam was also in the village, he took the said Purshottam with him to the site and found the dead body of a person who appeared like a Sardar and his face was mutilated from one side and there were bruises on the left side of the arm and it appeared that some vehicle had hit him and somebody had pulled him on the side of the road and left him there.

5. A case was registered under Sections 304A and 201 IPC and Jagdish Prasad, ASI was handed over the investigation of the said case. Necessary memos were prepared, post mortem was got done. On 21.1.2000, Man Singh (Pw.7) brother of deceased Sukhchen Singh appeared before

the SHO, PS Bapcha and gave a written report that his elder brother Sukhchen Singh aged 29 years working with B.P.S. Company, Delhi was driver of truck No.HR-38/D-9312 and on 3.2.2000 he came driving the said truck from Yamuna Nagar, Haryana with the goods and machinery parts for reaching Delhi on 4.2.2000 and the second driver of the said truck was Jhallupal s/o. Tijwapal and Khallasi Rampal who was brother of Jhallupal and since his brother Sukhchen Singh who was to return to home on 13.1.2000 on the occasion of Lohri, did not reach there, they inquired from the transport company in Delhi whereupon they were informed that the said truck along with driver was missing and on 15.1.2000, the partner of the transport company Shital Singh told him that the said truck was lying unattended near village Bhognipur and, thus, upon making further inquiries they reached village Dev Nagar, where accused Jhallupal was available there and upon inquiry from him about Sukhchen Singh, he told that them that there occurred an altercation between him and Sukhchen Singh and, therefore, he along with his brother Rampal had killed Sukhchen Singh and his body was left on Chhabra road in Rajasthan border on the night of 5.1.2000 and they left the truck unattended. Thereafter, the two accused Jhallupal and Rampal were arrested and challan was filed against them and both accused persons were tried by the learned trial court who acquitted Rampal but convicted the present appellant Jhallupal as aforesaid.

6. According to the post mortem report Ex.P-30 dated 6.1.2000 by Dr. Hem Raj Agarwal (Pw.16), the cause of death given in the said report is head injury. The description of injury in the said post mortem report is given as a lacerated wound on left side of face 10x6x4 cm and front maxillary bone of left half fractured. Bruise 10x8 cm left

infra-axillary area. The said doctor in his report also described all injuries anti mortem in nature and injury no.1 was sufficient in the ordinary course of nature to cause death.

7. The basis on which the present accused appellant has been convicted by the trial court is circumstantial evidence and extra judicial confession. The law relating to circumstantial evidence is well settled and to convict a person on the basis of circumstantial evidence, it must satisfy the following three tests:-

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

Circumstantial evidence means the evidence afforded not by the direct testimony of an eye witness to fact to be proved, but by the bearing upon that fact or other and subsidiary facts which are relied upon as inconsistent with any result other than truth of the principal facts. Circumstantial evidence is not an evidence direct to the point in issue e.g. the statement of a person that he saw another giving a fatal blow to the deceased, but evidence of various facts other than the fact in issue

which are so associated with the fact in issue that taken together they form a chain of circumstances leading to an inference or presumption of the existence of the principal fact. The circumstantial evidence should be like spider's web leaving no exit for the accused to slip away. The various links in the chain, when taken in isolation, might not connect the accused with the commission of the crime but when taken together may unmistakably point out the guilt of the culprit.

8. About the extra judicial confession also the burden lies upon the prosecution to prove with the help of attending facts and circumstances that the extra judicial confession made by the accused is free and fair and not made under influence or coercion or fear and that the circumstances available in the case corroborate the event and commission of offence by the accused beyond reasonable doubt. Solely relying upon the extra judicial confession of a person is not safe for convicting a person particularly of a heinous offence like murder U/s.302 IPC.

9. It is well settled that the evidence of extra judicial confession in the very nature of things is a weak piece of evidence but it is not open to any court to start with this presumption. It would depend on the nature of circumstances, the time when the confession was made and the credibility of witnesses, who speak to such a confession. From the stand point of reason, a confession may be subject to grave infirmative consideration, among others that is extremely improbable that a person should accuse himself of a serious crime. In Ghasi Ram Lakra Vs. State of Orissa, 1997 Cr.L.J. 939 (Orissa) it was held that where the accused alleged to have confessed before the brother of the deceased, neither

exact words nor the words substantially stated by the accused reproduced confession was highly improbable. Their Lordships of the Supreme Court in State of Rajasthan Vs. Raja Ram (2003) 8 SCC 180, indicated in para 19 as under:-

> "Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility."

10. In the present case, Hari Singh who lodged the FIR with PS Bapcha, while giving statement before the learned trial court turned hostile. He stated before the court that he was called by RAC personnel on the date of incident and when he went to village Bamla, he saw the dead body from a distance and he did not see the face of the dead body. Whether there were injuries on the body or not was not known to him. In his cross-examination, he further stated that whether the left side of the face of dead body was mutilated or not was not known to him as he has not seen it and whether somebody had killed the man and left him there also was not reported by him in the report to police station.

11. Another prosecution witness Raj Kumar (Pw.8) owner of

the transport company B.P.S. Road lines before whom the appellant is said to have made the extra judicial confession has also stated that the cause given by the appellant Jhallupal was that Sukhchen Singh had abused the appellant and on account of dispute he had hit the deceased Sukhchen on head with wheelpana. In his cross-examination, he stated that he had not seen the deceased Sukhchen Singh, Jhallupal and Rampal together and upto 4th of the said month the Khallasi of the truck was one Munna. Then he said that the said Khallasi Munna was employed only upto 3rd of the said month.

12. The appellant Jhallupal is said to have made the aforesaid extra judicial confession before four of the persons who went to his village Dev Nagar Shital Singh, Raj Kumar, transporters and Man Singh, brother of deceased Sukhchen Singh and Nishan Singh, another relative of deceased. Nishan Singh was not examined before the trial court. Another person Man Singh was an interested witness being brother of deceased. The transporters Shital Singh (Pw.4) and Raj Kumar (Pw.8) have also not corroborated in exact terms, the alleged extra judicial confession before them that the appellant Jhallupal had killed the deceased Sukhchen. No cogent reason does also appear to be coming forth for the said incident. The said confession is also made before two relatives of the deceased and, therefore, might have been made under threat or coercion also. The prosecution has failed to corroborate the said extra judicial confession with other unbroken chain of circumstances. Another factor which creates doubt about veracity of the said extra judicial confession is that it was made after about 10 days of the incident. Pw.4 Shital Singh in his statement has given out that Jhallupal

confessed before him that on account of dispute between Sukhchen and him he hit Sukhchen with wheelpana near his eye and he fell on the seat of the truck whereas Pw.8 Raj Kumar in his statement has narrated the alleged confession as that Sukhchen had abused the appellant and, therefore, he hit Sukhchen with wheelpana on his head and thereafter he slept on the seat of the truck and he came in the Rajasthan border where they pulled him down from the truck and hitting with the rod also and threw him there and came with the truck and went upto Bhopal. Thus, these are the material contradictions in the statements of the so called independent witnesses, the transporters, before whom the appellant Jhallupal made the said extra judicial confession which by itself is a weak type of evidence and, therefore, cannot be held to be sufficient for conviction of the appellant U/s.302 IPC. Therefore, in our opinion, the appellant Jhallupal is entitled to benefit of doubt in the present case and the trial court has erred in convicting him of the offences U/ss.302 & 201 IPC.

13. For the reasons, we allow the appeal and set aside the impugned findings of conviction and sentence. We acquit the appellant Jhallupal of the charges under Secs. 302 and 201 IPC. The appellant Jhallupal who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

(Dr.VINEET KOTHARI),J. (SHIV KUMAR SHARMA),J.

VS/